



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0454]

RIN 1625-AA00

Safety Zone; San Francisco Giants Drone Display; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay, outside McCovey Cove, in San Francisco, CA in support of an aerial drone display on June 8 through 9, 2023. The safety zone is necessary to protect the personnel, vessels, and the marine environment from potential hazards created by drones. Unauthorized persons or vessels are prohibited from entering, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or designated representative.

DATES: This rule is effective from 9 p.m. on June 8, 2023, until 10:15 p.m. on June 9, 2023.

The regulations in this rule will be enforced from 9 p.m. until 10:15 p.m. on both days.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0454 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant William K. Harris, U.S. Coast Guard Sector San Francisco, Waterways Management Division, at 415-399-7443, SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until May 22, 2023. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this safety zone by June 8 and 9, 2023, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the aerial drone show outside McCovey Cove in San Francisco, CA starting on June 8, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority 46 U.S.C. 70034. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the scheduled practice and aerial drone display for the San Francisco Giants on June 8-9, 2023, will be a safety concern to anyone within a 200-foot radius of Pier 48 starting 30 minutes before the

practice and display is scheduled to commence and ending 30 minutes after the conclusion of the display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around Pier 48 during the aerial drone display.

IV. Discussion of the Rule

This rule establishing a temporary safety zone from 9 p.m. on June 8, 2023 until 10:15 p.m. on June 9, 2023, during the practice and performance of an aerial drone display. This rule will be enforced from 9 p.m. until 10:15 p.m. on both days. The practice period for the drone display is scheduled to commence at 9:30 p.m. and end approximately at 9:45 p.m. on June 8, 2023, outside of McCovey Cove within the San Francisco Bay in San Francisco, CA. The drone display is scheduled to commence at the conclusion of the San Francisco Giants baseball game at approximately 9:30 p.m. and end approximately at 9:45 p.m. on June 9, 2023.

At 9 p.m. on both June 8, and June 9, 2023, which is 30 minutes prior to the commencement of the 15-minute aerial drone display, the safety zone will encompass the navigable waters around and under Pier 48, from surface to bottom, within a circle formed by connecting all points 200 feet from 37° 46' 34.3" N, 122° 23' 11.3" W (NAD 83), and thence along the shoreline. The safety zone enforcement will terminate at 10:15 p.m. on both June 8, and June 9, 2023, or as announced via Marine Information Broadcast.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the aerial drone display site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in a restricted area. A "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the Safety Zone. This regulation is necessary to ensure the safety of the participants, spectators, and transiting vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. The safety zone will only be enforced in a small waterway for less than 2 hours on two days. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimal impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP’s designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around Pier 48 in McCovey Cove within San Francisco Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T11-129 to read as follows:

§ 165.T11-129 Safety Zone; San Francisco Giants Drone Display; San Francisco Bay, San Francisco, CA.

(a) *Locations.* The following area is a safety zone: all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 200 feet out from Pier 48 at approximate position 37° 46' 34.3" N, 122° 23' 11.3" W (NAD 83).

(b) *Definitions.* As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the

COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Enforcement period.* This section will be enforced from 9 p.m. until 10:15 p.m. on June 8, 2023, and June 9, 2023.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Dated: May 26, 2023.

Taylor Q. Lam
Captain, U.S. Coast Guard
Captain of the Port San Francisco

[FR Doc. 2023-11800 Filed: 6/1/2023 8:45 am; Publication Date: 6/2/2023]